SUPREME COURT OF THE UNITED STATES.

No. 389.

LEWIS ROBERTS, A. F. ROBERTS, AND GIDEON W. BURBANK, PARTNERS, &c., AS L. ROBERTS & Co., APPELLANTS,

vs.

GEORGE H. HILTON AND HONORA HILTON, HIS WIFE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

INDEX.

	Original.	Print.
Answer of George H. Hilton	5	4
Answer of Honora Hilton	12	8
Appeal bond	30	19
Affidavits of G. W. Tucker and Daniel Brunson	31	19
Bill	1	1
Clerk's certificate	49	32
Deposition of G. W. Tucker	34	23
Deposition of Honora Hilton	41	27
Deposition of George H. Hilton	43	29
Examiner's report	27	17
Exceptions to examiner's report	28	18
Exceptions overruled	29	18
Exhibit No. 1	31	20
Exhibit No. 2	32	21
Exhibit No. 3	38	25
Examiner's certificate	37	24
Examiner's certificate	47	31
Journal entry, leave to Honora Hilton to answer	12	7
Journal entry, case referred to examiner	26	16
Objections of defendant to examination	36	24
Replication to answer	25	16
Recorder's certificate to mortgage	40	26
Security for costs	4	3
Subpœna	4	3
Citation	50	32

1 At a circuit court of the United States within and for the seventh judicial circuit and southern district of Ohio, begun and held at the court-house, in the city of Cincinnati, on the first Tuesday, being the third day of October, in the year of our Lord one thousand eight hundred and sixty-five, and of the independence of the United States of America the ninetieth.

Present: the Hon. N. H. Swayne and the Hon. H. H. Leavitt, judges of said court.

Among the proceedings were had the following, to wit:

LEWIS ROBERTS, ADDISON F. ROBERTS, and Gideon W. Burbank, partners in business, under the firm name of L. Roberts & Co.,
vs.
GEORGE H. HILTON and HONORA HILTON, his wife.
} 200. In chancery.

Be it remembered, that heretofore, to wit, on the twenty-ninth day of March, in the year of our Lord one thousand eight hundred and sixty-four, came the complainants, by their solicitor, and filed in the clerk's office of the court aforesaid their certain bill in chancery against the respondents herein, which said bill is in the words and figures following, to wit:

Bill.

To the honorable judges of the circuit court of the United States within and for the southern district of Ohio, in chancery sitting:

Your orators, Lewis Roberts, Addison F. Roberts, and Gideon W. Burbank, partners in business, under the name and firm of L. Roberts & Co., and all citizens and residents of the State of New York,

2 bring this their bill in chancery against George H. Hilton and Honora Hilton, his wife, both citizens and residents of the State of Ohio; and thereupon your orators complain, and say that at the February term, A. D. 1864, of this court on the law side thereof, they recovered a judgment at law against said George H. Hilton for the sum of ($3,198 72) three thousand one hundred and ninety-eight dollars and seventy-two cents, and costs of suit, taxed at dollars; and they aver that said George H. Hilton has neither real or personal property subject to execution sufficient to pay said judgment, or any substantial or considerable part thereof. They further aver, that all the property of any considerable value belonging to said Hilton, and out of which they must satisfy said judgment, if it is ever satisfied, consists of the following real estate, to wit: Lot (No. 86) number eighty-six, and fifteen feet wide off the west side of lot (No. 85) number eighty-five, in George W. Tucker's second subdivision of lots part of the Cutter tract number (8) eight, in the city of Cincinnati, in the county of Hamilton and State of Ohio, and recorded in plat book number one, page 186, of the records of said Hamilton county, being the same premises upon which said George H. Hilton resides, and the same premises deeded to George H. Hil-

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ton and Honora Hilton, his wife, by George W. Tucker, by deed dated March 21st, A. D. 1859, and recorded in book 250, page 240, of the records of said Hamilton county.

Orators aver that said premises are worth about the sum of six thousand dollars; that said premises were originally leased by said George W. Tucker to one David Bronson, by lease recorded
3 in the records of Hamilton county, in lease book No. 11, page 459, which lease bears date of October 1st, A. D. 1854; and said lease was assigned by said David Bronson to said George H. Hilton, he claiming to be trustee for said Honora Hilton, his wife, by deed of said Bronson, dated Nov. 6th, 1855, and recorded in Lease Book 12, page 392, of the Hamilton county records.

Orators aver that said George H. Hilton is in fact the true and lawful owner of said entire premises, and that the same should in justice be subjected to the payment of orators' said judgment; that said Honora Hilton does not in fact own any part of said premises, nor has she invested any of her own funds in the purchase thereof, nor has she in justice and in fact any legal interest therein; but that said premises were in fact purchased alone with the money of said George H. Hilton, and really belong to said George H. Hilton, free from all claim except future dower of said Honora Hilton therein. And orators aver that said George H. Hilton has caused said premises to be conveyed jointly to himself and said Honora, his wife, for the purpose of defrauding orators and placing said premises beyond the reach of orators, legal process, and beyond the reach of orators, his creditors, and beyond the reach of other creditors of said Hilton. All of which is contrary to equity.

Orators aver that they are without remedy at law in the premises; that nothing except said premises exists out of which they can make, collect, and satisfy their said judgment. They aver that said Honora Hilton has in fact no interest whatever in said premises, but that the same in fact belong to said George H. Hilton alone. They
4 therefore pray that process of subpœna may issue herein against said George H. Hilton and Honora Hilton, that they may be made parties defendant to this bill, that the rights of said Honora Hilton in said premises may be examined and determined; that said premises may be determined and adjudged to belong to said George H. Hilton alone, and that the same may be decreed to be sold to satisfy orators' said judgment, or that if said Honora should be adjudged to have any interest therein, the amount thereof may be ascertained and determined, and so much thereof as shall be adjudged to belong to said George H. Hilton may be partitioned and set off to him, and be held to satisfy orators' said judgment; and that orators may have such other and further orders, decrees, and relief in the premises as equity and the nature of this their case may require.

J. M. LEE, *Sol'r for Comp'ts.*

On the back of which bill was indorsed the following, to wit:

Security for costs.

We acknowledge ourselves bail for costs for complainants.

D. HARPER & SON.
By H. E. HARPER.

March 29th, 1864.

And thereupon there was issued out of the clerk's office of the court aforesaid a certain writ of subpœna in chancery against the said respondents, which is in the words and figures following, to wit:

Subpœna.

UNITED STATES OF AMERICA, *Southern District of Ohio, ss:*

The President of the United States of America to the marshal of the southern district of Ohio, greeting:

You are commanded to summon George H. Hilton and Honora Hilton, his wife, citizens of and resident in the State of Ohio, if they be found in your district, to be and appear in the circuit court of the United States for the southern district of Ohio aforesaid, at Cincinnati, on the first Monday in May next, to answer a certain bill in chancery filed, and *and* exhibited in said court against them by Lewis Roberts, Addison F. Roberts, and Gideon W. Burbank, partners, as L. Roberts & Co., citizens of and resident in the State of New York. Hereof you are to fail not under the penalty of the law thence ensuing. And have you then and there this writ.

Witness the honorable Roger B. Taney, Chief Justice of the United States, this 29th day of March, A. D. 1864, and in the 88th year of the independence of the United States of America.

Attest: JOHN McLEAN, *Clerk.*

Memorandum.—The said defendants are required to enter appearance in this suit in the clerk's office of said court on or before the first Monday of May, 1864, otherwise the said bill may be taken pro confesso.

[SEAL.] JOHN McLEAN, *Clerk.*

And afterwards, to wit, on the first Monday in May, in the year of our Lord one thousand eight hundred and sixty-four, it being the time to which said writ was made returnable, came the marshal, to whom in form aforesaid the said writ was directed, and returned the same unto the clerk's office of the court aforesaid, with his proceedings indorsed thereon in the words and figures following, to wit:

Mars. return.

MARCH 29TH, 1864.

Served the within named George H. Hilton, personally by copy.

and Honora Hilton, by copy, left at her usual place of residence, and also by delivering to her a copy personally, March 31st, 1864.

A. C. SANDS,
U. S. Marshal, S. D. O.
By J. W. SANDS, *Deputy.*

Fees:	
2 services	$4 00
2 copies	1 00
2 miles	12
Total	5 12

And afterwards, to wit, on the twenty-seventh day of April, in the year of our Lord one thousand eight hundred and sixty-four, came the defendant, George H. Hilton, by his counsel, and filed his answer to the bill herein, which is in the words and figures following, to wit:

Answer.

6 To the honorable judges of the circuit court of the United States within and for the southern district of Ohio, in chancery sitting:

Your respondent, George H. Hilton, a citizen and resident of the State of Ohio, one of the above named defendants to the petition of Lewis Roberts, Addison F. Roberts, and Gideon W. Burbank, partners in business under the name and firm of L. Roberts & Co., filed on the chancery side of this court against him, and Honora Hilton, his wife, for answer says: That he admits the fact of judgment being rendered against him on the law side of this court as stated in complainants' petition, and says that he has real estate subject to execution situated in the county of Hamilton, and State of Ohio; but he says that the real estate described in the complainants' bill, viz: Lot No. 86, and 15 feet off the west side of lot No. 85, in George W. Tucker's second subdivision of lots part of the Cutter tract, No. 8, in the city of Cincinnati, county of Hamilton, and State Ohio, and recorded in plot book No. 1, page 186, of the records of said county, being the same premises deeded to George H. Hilton and Honora Hilton by George W. Tucker and wife, by deed dated March 21, A. D. 1859, and recorded in book No. 250, page 240, of the records of said county; he holds as trustee for his wife, Honora Hilton, and after her death, in trust for her issue, and that he does not hold in his own right, as his individual property; nor any portion of the same.

Your respondent further says that the above described premises, which the complainants ask may be subjected to the payment of their said judgment against this respondent, were first leased by Geo. W. Tucker to one Daniel Brunson, by lease dated 1st day of October, A. D. 1854, and recorded on the 6th day of January, A. D. 1855,
7 in the records of Hamilton county, Ohio, in lease book No. 11, page 459; and that said lease, among other covenants, contained the following, to wit: "That the said party of the second part

(meaning the said lessee Daniel Brunson) will pay all taxes and assessments, ordinary and extraordinary, which may be levied or assessed on or against said premises during said term." (The term referred to being five or ten years.) "And within a reasonable time sufficient for building a house, said party of the second part will build on said premises herein demised a brick dwelling, containing at least four rooms, at least ten feet in rear of front, on Catherine street." "And it is further understood and agreed between said lessor and said lessee, that any time within five years from commencement of said term, said lessee, his legal representatives and assigns, shall have the privilege of purchasing the premises herein demised at the rate of sixty-five (65) dollars per front foot on said Catherine street; and at any time within and during said term of ten years, at the rate of seventy-five ($75) dollars per front foot on said street. Always provided, however, said rents, reserved, charges, taxes, and assessments are paid, and the terms, covenants, and conditions of said lease to be paid, kept, and performed on the part of said lessee, are so paid, kept, and performed. And in such case that said lessor will at any time, within periods, and on the payment of the purchase money above limited, and on conditions above annexed, convey unto said lessee, his heirs and assigns, said premises by a good and sufficient and general warranty deed."

And this respondent further says that the said Daniel Brunson complied with all the covenants which were required of him
8 to be performed and contained, said lease up to the period of his sale or assignments of his rights and privileges in said lease, which assignment will be hereafter described; and that before said assignment he built the brick dwelling house upon said premises as in said lease he was required to do.

And this respondent further says that on the 6th day of November, A. D. 1855, the said Daniel Brunson made a sale, and an assignment of said lease, written on the back of the same, with its privileges and appurtenances. in the words and figures following, to wit:

"I, Daniel Brunson, the lessee in the foregoing lease named, for and in consideration of the sum of three thousand and thirty-four $\frac{57}{100}$ dollars, to be paid by the assignee herein, the sum of $2,034 $\frac{57}{100}$, being paid cash in hand, and the balance by notes and mortgage. do hereby sell, assign, transfer, and set over to George H. Hilton, in trust for his wife, Honora Hilton, and after her death, in trust for her issue, the same being paid with her sole money, all my right, title, interest, claim, and demand of, in, and to the within lease, the premises therein described and the house situated upon the same, together with all the privileges and appurtenances to the same belonging: To have and to hold the same to the said George H. Hilton in trust for the said Honora Hilton, her heirs and assigns.

In witness whereof I hereto set my hand and seal this sixth day of November, (A. D. 1855,) eighteen hundred and fifty-five.

Signed, sealed, and delivered in presence of—

[SEAL.] R. JAMES ANDERSON.
CHAS. C. HARRIS.
DANIEL BRUNSON.

STATE OF OHIO, *Hamilton County, ss:*

Be it remembered, that on the sixth day of November, A.D. 1855, personally appeared before me the undersigned, a notary public in and for said county, Daniel Brunson, the assignor of the foregoing lease, and acknowledged the same and the signing and sealing thereof, to be his own voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I hereto set my hand and affix my notarial seal at Cincinnati, O., the day and year above written.

[SEAL.] CHAS. C. HARRIS,
Notary Public.

I accept the trust above named, 6th Nov., 1855.

GEO. H. HILTON.

Which assignment and acceptance of the trust aforesaid are recorded in the records of Hamilton county, Ohio, on the 6th of Nov., 1855, in lease book No. 12, page 392. And this respondent further states that the above-described purchase was made with the sole money of his wife, the said Honora Hilton, and that this respondent has not, nor does he claim any interest in the said premises, in his own individual right, but only as trustee, as in the above-described assignment is expressed; that he accepted said trust and still considers himself as trustee aforesaid, and further that the notes and mortgage mentioned in said assignment were duly paid by the said trustee with the sole and separate money of said Honora Hilton, and same cancelled upon the record on the 13th March, A. D. 1858.

And this respondent further says, that at the date of the said assignment the said Honora Hilton had issue, children born of the marriage of herself and this respondent, all of whom are still living and are minors, but one.

And this respondent further says, that on the 21st day of March, A. D. 1859, all the conditions of said lease being strictly complied with as required, for that purpose, by the parties to said lease, and to the said assignment, the said George W. Tucker and Sarah Ann Tucker, his wife, made and executed to George H. Hilton, your respondent, and Honora Hilton, his wife, a general warranty deed for the premises described in said lease, which deed contains the following clause, to wit:

"This conveyance being made in compliance with the covenants of a lease to Daniel Brunson, recorded January 6th, 1855, in the lease book No. 11, page 459, and assigned to grantees, and recorded lease book No. 12, page 392."

Your respondent further says, that he does not know why said deed was made out in the names of George H. Hilton and Honora Hilton; nor how it occurred; but he recollects that the deed was made out and presented to him, and finding the above-mentioned clause mentioned therein, he considered that it but repeated the trust contained in the assignment of the lease, by making a direct and special reference to the record of the same, and that the deed was made in compliance therewith.

Your respondent therefore considered that, taking the whole deed together, the conveyance was made to him as trustee for the said Honora Hilton, and accordingly, after her death, in trust for her issue, and hence he had the same recorded. But if, upon consideration of the case, the court finds that respondent erred, or was mistaken in this regard, he prays the court may correct the same and render such decree as equity and justice require to the parties interested in the premises.

Your respondent further says that his wife, the said Honora Hilton, had no knowledge of the manner in which said deed of conveyance was made until after it was recorded, and probably not until
11 this suit was brought, as he always considered as above stated that he held by virtue of said deed as trustee for her, and after her death as trustee for her issue, and always so informed her. Your respondent denies all fraud or intention to defraud any one, creditor or otherwise.

And this respondent further says, that at the time of the assignment of said lease, the 6th day of November, A. D. 1855, and also at the date of the execution of said deed, 21st March, A. D. 1859, he was perfectly solvent and owed no debts, except probably a few small ones, which ordinarily occur in the support of a family, and which were duly paid, and therefore he had no creditors to defraud; and further, that at the dates aforesaid he was not engaged in any business of risk or hazardous speculation. And respondent denies that he caused said conveyance to be made to himself and wife for the purpose of defrauding the plaintiffs, or placing said premises beyond their reach as creditors, or beyond the reach of other creditors.

And this respondent having fully answered complainants' bill, he prays to be hence dismissed with his proper costs.

E. A. FERGUSON,
Solicitor for Defendant.

STATE OF OHIO, *Hamilton County, ss:*

I, George H. Hilton, above-named defendant, being duly sworn, depose and say that all the several matters and things which are set forth in the foregoing answer, as from the information of others, I believe to be true, and that all the several other matters and things therein set forth are true in substance and in fact.

G. H. HILTON.

Signed and sworn to before me, this 27th day of April, 1864.
JOHN McLEAN, *Clerk.*

And afterwards, to wit, on the 2d day of May, A. D. 1864, an entry was made upon the journal of said court in the words and
12 figures following, to wit:

Journal entry.

On motion of the defendant, George H. Hilton, and it appearing that his wife, Honora Hilton, defendant herein, claims an interest adverse to him in the premises in the bill mentioned, leave is hereby

given to her to file a separate answer; and it is further ordered that the separate answer of the said George H. Hilton, heretofore filed in this case, be received as such.

Whereupon, in pursuance of the leave granted in the foregoing entry, the defendant, Honora Hilton, filed her answer herein, which is in the words and figures following, to wit:

Answer of Honora Hilton.

To the honorable judges of the circuit court of the United States within and for the southern district of Ohio, in chancery sitting:

The separate answer of Honora Hilton, a citizen and resident of the State of Ohio, one *one* of the above-named defendants, by John N. Hays, her next friend, the leave of the court having been first obtained for that purpose, to the petition of Lewis Roberts, Addison F. Roberts, and Gideon W. Burbank, partners in business under the name and firm of L. Roberts & Co., citizens and residents of the State of New York, filed on the chancery side of this court against her, and George H. Hilton, her husband, for answer, says: That she knows nothing of a judgment being rendered against her said husband on the law side of this court, as stated in complainants' petition, except that she has been informed that such is the fact. Your respondent says that the real estate described in the complainants' bill, viz: Lot 86, and 15 feet off the west side of lot No. 85, in George W. Tucker's second sub-division of lots, part of the Cutter tract No. 8 in the city of Cincinnati, county of Hamilton, and State of Ohio, and recorded in *in* plat book No. 1, page 186, of the records of said county, 13 being the same premises deeded to Geo. H. Hilton and Honora Hilton by Geo. W. Tucker and wife, by deed dated March 21, A. D. 1859, and recorded in book No. 250, page 240, of the records of said county, was purchased with her sole and individual money, and that the same should have been conveyed to said Geo. H. Hilton in trust for your respondent, and after her death, in trust for her issue; the said Geo. H. Hilton, her husband, having assumed the office of trustee for that purpose at the request and solicitation of your respondent. Your respondent further says that the above-described premises, which the complainants ask may be subjected to a judgment against her said husband, were first leased by Geo. W. Tucker to one Daniel Brunson, by lease dated 1st of October, A. D. 1854, and recorded on the 6th day of January, 1855, in the records of Hamilton county, Ohio, in lease book No. 11, page 459, a certified copy of which lease, marked "A," is herewith filed and made part hereof. And this respondent further says that the said Daniel Brunson, as she is informed and believes, complied with all the covenants which were required of him to be performed and contained in said lease up to the period of his sale and assignment of his rights and privileges in said lease, which assignment will be more fully referred to hereafter; and that before said assignment, he built the brick dwelling house upon said premises, as in said lease he was required to do. And this respondent further says, that on the 6th day of

November, 1855, the said Daniel Brunson made a sale and an assignment of said lease, written on the back of the same, to the said Geo. H. Hilton, her husband, in trust for this respondent, and after
14 her death, in trust for her issue, with its privileges and appurtenances, a certified copy of which assignment is herewith filed, marked "B," and made part hereof. Your respondent further says that the said George H. Hilton accepted the said trust and the consideration money mentioned in said assignment, was paid in full by her said trustee out of the sole and separate money of your respondent. And your respondent further says that, at the date of said assignment, your respondent had issue, children born of the marriage of herself and the said George H. Hilton, all of whom are still living and are minors but one. And this respondent further says that on the 21st day of March, A. D. 1859, all the conditions of said lease being strictly complied with for that purpose by the parties to the said lease, and to the assignment, the said George W. Tucker and Sarah Ann Tucker, his wife, made and executed to George H. Hilton and Honora Hilton, his wife, your respondent, a general warranty deed for the said premises above described; a certified copy of which deed is herewith filed, marked "C," and made a part hereof. Your respondent further says that she does not know why said deed was made out in the names of Geo. H. Hilton and Honora Hilton, nor how it occurred; but she says that the consideration money mentioned in said deed, $2,145, was paid by her said trustee out of her sole and separate money, and the deed should have been made to the said Geo. H. Hilton, in trust for respondent, and after her death, in trust for her issue, as expressed in the assignment of said lease, and as hereinbefore stated. And your respondent further says that she has no knowledge of the manner in which said deed of conveyance was made until this suit was brought; she never having seen the deed, relying upon her said trustee to
15 attend to it, and who always informed her that the deed was made in accordance with the trust mentioned in the assignment, and from that time until this suit was brought, she never troubled herself more about it; but if, upon consideration of this case, the court finds there has been any error or mistake in the execution of said deed, she prays the court to correct the same, or have it made or corrected in accordance with the requirements of the assignment of the lease aforesaid, and in accordance with the facts of the case. Your respondent denies all fraud in this transaction, or intention to defraud any one, either creditor of my said husband, or otherwise; and further denies that she caused said conveyance to be made for the purpose of defrauding the complainants, or placing said premises beyond their reach as creditors, or beyond the reach of other creditors. And your respondent further says, that at the date of said assignment, and also at the date of said deed, she owed no debts in her own right, except said mortgage to Brunson, mentioned in said assignment, which was paid out of her own money, and with that exception had no creditors. And this respondent reserves to herself the benefit of all exceptions which may be had or taken to the

many errors, uncertainties, and imperfections in said bill contained. And having fully answered said bill, prays to be hence dismissed with her costs and charges in this behalf sustained.

E. A. FERGUSON,
Solicitor for Defendant.

THE STATE OF OHIO, *Hamilton County, ss:*

I, Honora Hilton, the above-named respondent, being duly sworn, depose and say that all the several matters and things which are set forth in the foregoing answer as from the information of others, I believe to be true, and that all the several other
16 matters and things therein set forth are true in substance and in fact.

HONORA HILTON.

Sworn to before me, and signed in my presence, this second day of May, 1864.

[SEAL.]

S. A. MILLER,
Notary Public, Hamilton Co., Ohio.

"A."

Received and recorded January 6th, 1855.

This indenture, made this first day of October, anno Domini, eighteen hundred and fifty-four, between George W. Tucker, party of the first part, and Daniel Brunson, party of the second part, witnesseth: That the said party of the first part, for and in consideration of the rents, covenants, and agreements hereinafter mentioned, reserved, and contained, on the part and behalf of the said party of the second part, his executors, administrators, and assigns, to be paid, kept, and performed, hath granted, demised, and to farm letten, and by these presents doth grant, demise, and to farm let unto the said party of the second part, his executors, administrators, and assigns, all those certain lots or parcels of land in the city of Cincinnati, county of Hamilton, State of Ohio, being lot number eighty-six, and fifteen feet off the west side of lot number eighty-five, as known and designated on a plat of George H. Tucker's second subdivision of lots as recorded in the records of said county in book of plats No. 1, page 186, beginning at a point on the south side of Catherine street, one hundred and twenty-three feet from the southeast corner of Freeman and Catherine streets, and three feet west of the northeast corner of said lot No. 85; thence westerly, thirty feet, three in front on south side of said Catherine street to west side of said lot No. 86; thence, with said west line, parallel with Freeman street, in a southerly direction, one hundred and twenty-seven and one-half (127½) feet, more or less,
17 to a twelve feet alley; thence easterly along said alley thirty-three feet; thence northerly parallel with Freeman street, and east line of lot No. 85, 127½ feet, more or less, to beginning. To have and to hold the said above-mentioned and described premises, with the appurtenances unto the said party of the second part, his ex-

ecutors, administrators, and assigns, from the first day of October, one thousand eight hundred and fifty-four, for and during, and until the full end and term of ten years thence next ensuing, and fully to be complete and ended, yielding and paying therefor unto the said party of the first part, his heirs or assigns, yearly, and every year during the said term, hereby granted the yearly rent or sum of six per cent. per annum on the respective purchase moneys in equal quarterly payments, to wit: during the first five years of said term $32 17-100 every three months, and during 2nd 5 years, $37 12-100 every three months in each and every of the said years. And the said party of the second part for himself, his heirs, executors, and administrators, doth covenant and agree to and with the said party of the first part, his heirs and assigns, by these presents: That the said party of the second part, his execntors, administrators, and assigns, shall and will, yearly, and every year during the said term hereby granted, will and truly pay or cause to be paid unto the said party of the first part, his heirs or assigns, the said yearly rent above reserved on the days and in the manner limited and prescribed as aforesaid for the payment thereof, without any deduction, fraud, or delay, according to the true intent and meaning of these presents. And that said party of the second part will pay all taxes and assessments,
18 ordinary and extraordinary, which may be levied or assessed on or against said premises during said term. And within a reasonable time, sufficient for building a house herein required, said party of the second part will build on said premises herein demised a brick dwelling, containing at least four rooms, and locate said dwelling house on said premises at least ten feet in rear of front on said Catherine street. And that on the last day of said term, or other sooner determination of the estate hereby granted, the said party of the second part, his executors, administrators, and assigns, shall, and will, peaceably and quietly leave, surrender, and yield up unto the said party of the first part, his heirs or assigns, all and singular, the said demised premises. And that at all times the said party of the first part, his heirs and assigns, shall have a perfect lien preferable to all other liens or claims upon the said demised premises and improvements thereon, for all rents and charges on said premises that may become due and payable by the terms of this lease, until the same shall be fully paid and discharged, and that if it shall happen that any instalment of the rents hereinbefore reserved shall not, with the interest accruing thereon, be paid to the said party of the first part, his heirs and assigns, without demand, at the time the same shall become due and payable, or at any time thereafter, if demanded, or if default shall be made in any of the covenants herein contained on the part and behalf of the said party of the second part, his legal representatives and assigns, to be paid, kept, and performed, then and in either case this lease shall become and be void and held for nought, and the said premises revert absolutely to the said
19 party of the first part, his heirs and assigns, discharged of the lease and all the covenants therein contained forever thereafter. And it is further understood and agreed between said lessor and said

lessee, that at any time within five years from commencement of said term, said lessee, his legal representatives and assigns, shall have the privilege of purchasing the premises herein demised at the rate of sixty-five (65) dollars per front foot on said Catharine street, and at any time within and during said term of ten years at the rate of seventy-five (75) dollars per front foot on said street. Always provided, however, said rents reserved, charges, taxes, and assessments, are paid, and the terms, covenants, and conditions of said lease to be paid, kept, and performed on the part of said lessee, are so paid, kept, and performed, and in such case that said lessor will at any time within periods, and on the payment of the purchase money above limited, and on conditions above named, convey unto said lessee, his heirs and assigns, said premises, by a good, sufficient, and general warranty deed. And the said party of the first part for himself, his heirs, executors, and administrators, doth covenant and agree to and with the said party of the second part, his executors, administrators, and assigns, by these presents, that the said party of the second part, his executors, administrators, or assigns, paying the said yearly rent above reserved, and performing the covenants and agreements aforesaid on their part, the said party of the second part, his executors, administrators, and assigns, shall, and may, at all times during said term hereby granted, peaceably and quietly have, hold, and enjoy the said demised premises without any manner of let, suit, trouble, or hindrance, of or from the said party of the first part, his heirs or assigns, or any other person or persons whomsoever.

20 In witness whereof the said George W. Tucker, lessor, and Daniel Brunson, lessee, in the within indenture of lease, have hereunto set their hands and affixed their seals on the day and year first above mentioned.

[SEAL.] GEO. W. TUCKER.
[SEAL.] DANIEL BRUNSON.

Signed, sealed, and acknowledged in presence of—
GEO. T. WILLIAMSON and
JOHN BLACKBURN.

STATE OF OHIO, *Hamilton County, ss:*

Be it remembered, that on this third day of January, in the year of our Lord one thousand eight hundred and fifty-four, before me, the subscriber, a notary public in and for the county aforesaid, personally came George W. Tucker, the lessor, and Daniel Brunson, the lessee, and acknowledged the signing and sealing the same to be their voluntary act and deed, for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name, and affixed my notarial seal on the day and year last aforesaid.

[SEAL.] JOHN BLACKBURN,
Notary Public.

STATE OF OHIO, *Hamilton County, ss:*

I, F. H. Oehlmann, recorder of the county aforesaid, do hereby certify that the foregoing is a correct copy of a lease as recorded in my office, 6 January, 1855, in book No. 11, page 459, records of Hamilton county, Ohio.

Witness my hand and seal of office this 27th day of April, 1864.

[SEAL.] F. H. OEHLMANN,
Recorder Ham. Co., O.

[5-ct. stamp]

Exhibit "B."

"B." Received and recorded 6th Nov., 1855. (See original lease pook 11, page 459.)

I, Daniel Brunson, the lessee in the foregoing lease named, for and in consideration of the sum of three thousand and thirty-four and 57-100 dollars, to me paid by the assignee herein, (the sum
21 of $2,034 $\frac{57}{100}$ being paid cash in hand, and the balance by notes and mortgage,) do hereby sell, assign, transfer, and set over to George H. Hilton, in trust for his wife, Honora Hilton, and after her death in trust for her issue, (the same being paid with her sole money,) all my right, title, interest, claim, and demand, of, in and to the within lease, the premises therein described and the house situated upon the same, together with all the privileges and appurtenances to the same belonging, to have and to hold the same to the said George H. Hilton, in trust for the said Honora Hilton, her heirs and assigns.

In witness whereof I have hereto set my hand and seal this 6th day of November, A. D. eighteen hundred and fifty-five.

[SEAL.] DANIEL BRUNSON.

Signed, sealed and delivered in the presence of—
R. JAMES ANDERSON.
CHAS. C. HARRIS.

THE STATE OF OHIO, *Hamilton County, ss:*

Be it remembered, that on this 6th day of November, A. D 1855, personally appeared before me, the undersigned, a notary public in and said county, Daniel Brunson, the assignor of the foregoing lease, and acknowledged the same, and the signing and sealing thereof, to be his voluntary act and deed, for the uses and purposes therein men-
22 tioned.

In testimony whereof I have hereto set my hand and affixed my notarial seal, at Cincinnatti, O., the day and year above written.

[SEAL.] CHAS. C. HARRIS,
Notary Public.

I accept the trust above named, 6th November, 1855.

GEO. H. HILTON.

STATE OF OHIO, *Hamilton county, ss:*

I, F. H. Oehlmann, recorder of the county aforesaid, do hereby certify that the foregoing is a correct copy of a lease as recorded in my office 6th November, 1855, in book No. 12, page 392, records of Hamilton county, Ohio.

Witness my hand seal of office this 27th day of April, 1864.

[SEAL.] F. H. OEHLMANN,
Recorder Ham. Co., Ohio.

[5-cent U. S. stamp]

Exhibit "C."

"C," received and recorded March 18th, 1859.

Know all men that George W. Tucker and Sarah Ann Tucker, his wife, both of the city of Cincinnati, county of Hamilton, and State of Ohio, for and in consideration of two thousand one hundred
23 and forty-five dollars, to them paid by George H. Hilton and Honora Hilton, his wife, both of the city, county, and State aforesaid, the receipt whereof is hereby acknowledged, do hereby bargain, sell, and convey to the the said George H. Hilton and Honora Hilton, his wife, their heirs and assigns forever, the following real estate, viz: all those certain lots or parcels of land in the city of Cincinnati, county of Hamilton, and State of Ohio, being lot No. 86, and fifteen feet off the west side of lot No. 85, as known and designated on a plat of George W. Tucker's second subdivision of lots, as recorded in the records of said county, in book of plats No. 1, page 186, beginning at a point on the south side of Catharine street, and three feet west of the northeast corner of said lot No. 85, thence westerly thirty-three feet in front on the south side of said Catharine street, to west line of said line No. 86; thence with said west line parallel with Freeman street, but so as to include western brick wall of dwelling now built on premises, hereby intended to be conveyed, in a southerly direction, one hundred and twenty-seven and one-half feet, (127½,) more or less, to a twelve feet alley; thence easterly along said alley thirty-three feet; thence northerly parallel with Freeman street and east line of lot No. 85, one hundred and twenty-seven and one-half feet, more or less, along line o west wall of brick dwelling now built next east of premises, now conveyed to place of beginning; this conveyance being made in compliance with the covenants of a lease to Daniel Brunson, recorded January 6th, 1855, in lease book No. 11, page 459, and assigned tc grantees, and recorded lease book No. 12, page 392, Hamilto
24 county records, together with all the privileges and appurtc nances to the same belonging, to have and to hold the same t the said George H. Hilton and Honora Hilton, their heirs an assigns, forever; and the said George W. Tucker, for himself and hi heirs, do hereby covenant with the said George H. Hilton and Ho nora Hilton, their heirs and assigns, that he is lawfully seized of the premises aforesaid, and that the premises are free and clear from all encumbrance whatsoever, and that he will forever warrant and defend

the same, with the appurtenances, unto the said Geroge H. Hilton and Honora Hilton, their heirs and assigns, against the lawful claims of all persons whomsoever.

In witness whereof the said George W. Tucker and Sarah Ann Tucker, his wife, who hereby relinquishes unto said George H. Hilton and Honora Hilton, their heirs and assigns forever, all her claim of dower in said premises, have here set their hands and seals this 21st day of March, in the year eighteen hundred and fifty-nine.

[SEAL.] GEO. W. TUCKER.
[SEAL.] SARAH ANN TUCKER.

Signed, sealed and acknowledged in presence of—
GEO. H. TUCKER.
JOHN BLACKBURN.

THE STATE OF OHIO, *Hamilton County, ss:*

Be it remembered, that on this twenty-first day of March, in the year of our Lord one thousand eight hundred and fifty-nine, before me, the subscriber, John Blackburn, a notary public in and for said county, personally came George W. Tucker and Sarah Ann Tucker, the grantors in the above conveyance, and acknowledged the signing and sealing the same to be their voluntary act and deed, for the uses and purposes therein mentioned; and the said Sarah Ann Tucker, wife of the said George W. Tucker, being at the same time examined by me
25 separate and apart from her said husband, and the contents of said deed being by me made known and explained to her, then declared that she did voluntary sign, seal, and acknowledge the same, and that she is still satisfied therewith as her act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal at Cincinnati, on the day and year last aforesaid.

[SEAL.] JOHN BLACKBURN,
Notary Public.

STATE OF OHIO, *Hamilton County, ss:*

I, F. H. Oehlmann, recorder of the county aforesaid, do hereby certify that the foregoing is a correct copy of a deed as recorded in my office, March 18th, 1859, in book No. 250, page 240, records of Hamilton county, Ohio.

Witness my hand and seal of office, this 27th day of April, 1864.

[SEAL.] F. H. OEHLMANN,
Recorder, Hamilton Co., O.

[Stamp.]

And afterwards, to wit, on the 23d day of May, A. D. 1864, came the complainants, by their solicitor, and filed their replication to the answers of defendants herein, which is in the words and figures following, to wit:

Replication.

The replication of L. Roberts & Co., complainants, to the answer of George H. Hilton and Honora Hilton, his wife, defendants:

These repliants, saving and retaining to themselves all and all manner of exceptions to the manifest insufficiencies of the said answer of the defendants, for replication thereunto say: That they will aver and prove their said bill to be true, certain, and sufficient in law to be answered unto, and that both said answers of defendants are untrue, uncertain, and insufficient to be replied unto by these repliants; without this, than any other matter or thing whatsoever in either
26 of said answers contained, material or effectual in law to be replied unto, confessed, and avoided, traversed and denied, is true; all which matters and things these repliants are, and will be, ready to aver and prove as this honorable court shall direct, and pray as in and by their said bill they have already prayed.

G. M. LEE,
Solicitor for Replicants.

And afterwards, to wit, on the twenty-fifth day of June, A. D. 1864, an entry was made upon the journal of said court, which is in the words and figures following, to wit:

Journal entry.

On motion of complainants' counsel, this cause is referred to John L. Miner, as an examiner, to take all needful testimony therein, under the sixty-seventh rule in chancery, and to compel the production of all necessary books and papers; and he is also ordered to place on file in this court the evidence taken by either party in the cause, and the same is hereby continued.

And afterwards, to wit, on the fifth day of December, A. D. 1864, an entry was made upon the journal of said court, which is in the words and figures following, to wit:

Journal entry.

The motion previously submitted to the court for the appointment of a receiver herein is hereby overruled, and the examiner is ordered to file his report and evidence taken in this cause at the next term, and cause continued under former order herein.

And afterwards, to wit, on the twenty-fourth day of February, in the year of our Lord eighteen hundred and sixty-five, an entry was made upon the journal of said court in the words and figures following, to wit:

Journal entry.

On motion of complainants, it is ordered that this cause be referred back to John L. Miner, an examiner of this court, and full

27 power is hereby given said examiner to take all proper testimony in this cause, and he is ordered to ascertain and state the extent of the interest of each of the defendants in the premises described in the bill. And it is further ordered, adjudged, and decreed that complainant have a right to cause an examination of each of said defendants before said examiner on terms, and also to have the right to compel the production of all books, vouchers, and documents belonging to either of the defendants, and that each of defendants attend before said examiner for such purpose, from time to time, as said examiner shall direct; and said examiner is ordered to find and state in his report the interest which either of said defendants has in said premises, and their respective equities therein, and he is ordered to file his report, with the evidence taken herein, at the next term of this court.

And afterwards, to wit, on the tenth day of April, in the year last aforesaid, an entry was made upon the journal of the court aforesaid, which said entry is in the words and figures following, to wit:

Journal entry.

On motion of the complainants, it is ordered that the examiner in this cause have the time extended within which to file his said report herein, and that he be ordered to file his report at the next June term of this court; and in accordance with the above, this cause is hereby continued to next June term.

And afterwards, to wit, on the twenty-eighth day of June, 1865, came the examiner and filed in the clerk's office of the court aforesaid his report, which said report is in the words and figures following, to wit:

Report of examiner.

John L. Miner, one of the examiners of this court, to whom this cause was referred by order of the court of February 24th,
28 1865, now comes and reports that under said order counsel for complainants examined before him the said defendants, George H. Hilton and Honora Hilton, his wife, whose testimony was reduced to writing by the examiner, and is herewith returned into court; that no other witnesses presented for examination by either party; that in obedience to said order he has carefuly considered the pleadings. exhibits, and evidence in said cause, and finds that the sole beneficial interest in said premises described in complainants' bill belongs to said Honora Hilton; and that the said George H. Hilton has no interest therein.

JOHN L. MINER,
Examiner U. S. Circuit Court for South'n Dist. of Ohio.

And afterwards, to wit, on the eighth day of July, 1865, came the complainants, by their counsel, and entered the following exceptions to master's report, which are in the words and figures following, to wit:

Exceptions to mas. rep.

To the honorable judges of said court, in chancery sitting:

Exceptions taken by the complainants to the report of John L. Miner, acting as an examiner and master in chancery in said cause, and filed herein June 28th, A. D. 1865:

1st. That complainants except to said report, for that the said master and examiner has stated and found in his said report, "that the sole beneficial interest in said premises described in complainants' bill belongs to said Honora Hilton, and that the said George H. Hilton has no interest therein."

2d. For that the said master and examiner in his said report has certified and found that said George H. Hilton, defendant, has no interest in the premises described in the bill which can be reached by complainants and subjected to the payment of their judgment described in the bill.

3d. For that the report and findings of said master and
29 examiner in his said report are in favor of said Honora Hilton, defendant, when they should have been in favor of the complainants.

4th. For that the report and proceedings of said master and examiner are contrary to the equity of the case and to the evidence therein.

In all which particulars the complainants except to said report and findings, and appeal therefrom to the judgment of the court, and ask that said report may be set aside and held for nought, and that the court will render such decree in the case as equity and the nature of the case may require.

G. M. LEE,
Solicitor for Complainants.

And afterwards, to wit, on the twenty-fourth day of October, 1865, the following entry was made upon the journal of said court, in the words and figures following, to wit:

Journal entry.

This cause coming on for hearing upon the exceptions of complainants by their counsel to the report of the master filed herein, was argued by counsel and submitted, and the court, upon consideration thereof, deem said exceptions not well taken and overrule the same; and it is ordered and decreed that the bill herein be dismissed with costs. And it is further ordered that complainants pay the costs herein to be taxed within ten days, and in default thereof, that execution issue therefor as upon judgments at law.

And afterwards, to wit, on the twenty-eighth day of October, 1865, an entry was made upon the journal of said court, which said entry is in the words and figures following, to wit:

Journal entry.

On motion of the court, it is ordered that John L. Miner, esq., the examiner heretofore appointed in this cause, be allowed a fee of fifty dollars for his services as examiner, which sum shall be taxed in the costs, and complainants by their counsel having here-
30 tofore given notice of appeal to the Supreme Court of the United States, it is ordered that the amount of the bond for appeal be fixed at five hundred dollars.

And afterwards, to wit, on the thirteenth day of January, in the year of our Lord one thousand eight hundred and sixty-six, came the complainants, by their counsel, and filed in the clerk's office of said court an appeal bond, which said appeal bond is in the words and figures following, to wit:

Appeal bond.

Know all men by these presents, that we, Lewis Roberts, Addison F. Roberts, and Gideon W. Barbank, partners as L. Roberts & Co., Henry E. Harper, and George M. Lee, are held and firmly bound unto George H. Hilton and Honora Hilton, his wife, in the penal sum of five hundred dollars, to the true payment of which we do hereby jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this 13th day of January, A. D. 1866. The condition of this bond is such that whereas said L. Roberts and Co. have appealed to the Supreme Court of the United States, a certain suit in chancery by them brought against said George H. Hilton and Honora, his wife. Now if said L. Roberts and Co. shall make good their said appeal, and reverse said decree against them in said case, or pay all costs or damage sustained by said Hilton and wife therein, then this bond shall be void and of no effect, otherwise of full force and virtue in law.

[SEAL.] G. M. LEE.
[SEAL.] HENRY E. HARPER.

Attest: M. H. GARRY.

And afterwards, to wit, on the eighth day of February, A. D. 1865, came John L. Miner, the examiner aforementioned, and filed in the clerk's office of the said court the affidavits of George
31 W. Tucker and Daniel Brunson herein, which said affidavits are in the words and figures following, to wit:

Affidavits of Geo. W. Tucker and Dan'l Brunson.

The defendants are hereby notified that complainants desire the evidence to be adduced in this cause to be taken orally, Jan'y 24th, 1865.

G. M. LEE,
Solicitor for Compl's.

Notice to defendants.

G. M. Lee makes oaths and says, on Jan'y 24th, 1865, he left a copy of this notice with E. A. Ferguson, defdt's solc'tr, at his office with his partner, and put a copy thereof in the Cincinnati post office for George H. Hilton same day.

G. M. LEE.

Sworn to and subscribed before me, Feb. 8th, 1865.

J. L. MINER, *Examiner.*

[Stamp.]

Exhibit No. 1.

On motion of complainants' counsel, this cause is referred to John L. Miner, as an examiner, to take all needful testimony therein under the sixty-seventh rule in chancery, and full power is hereby given said examiner to examine the parties herein, and to compel the production of all necessary books and papers, and he is also ordered to place on file in this court the evidence taken by either party in the cause, and the same is hereby continued.

UNITED STATES OF AMERICA, *Southern District of Ohio, ss:*

I, John McLean, clerk of the circuit court of the United States for said district, hereby certify that the foregoing entry is truly taken and copied from the journal of said court as the same is kept in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this 9th day of January, A. D. 1864, and in the 89th year of the independence of the United States of America.

Attest: JOHN McLEAN, *Cl'k.* [SEAL.]

Notice to parties.

Take notice that I have ordered and appointed Wednesday, the 1st day of February, A. D. 1865, to proceed with the examination in this case under the order of reference at my office, No. 21, 32 West 3rd street, Cincinnati, O., at 10 o'clock a. m. of said day.

J. L. MINER, *Examiner, &c.*

To Geo. H. Hilton, esq., and others, Cin., Jan'y 30th, 1865.

Defendants will please take notice of the above order of Examiner Miner, Jan. 30th, 1865.

G. M. LEE,
Sol'c. for Comp't.

U. S. AMERICA, *State of Ohio:*

Geo. M. Lee being sworn says, that on Jan'y 30th, 1865, he served a copy of this notice on E. A. Ferguson, sol. for deft., by leaving it at his office with his law partner.

Sworn to and subscribed before me, this Feb'y 8th, 1865.

J. L. MINER, *Examiner.*

[Stamp.]

Exhibit No. 2.

Take notice that I have ordered and appointed Wednesday, the 1st day of February, A. D. 1865, to proceed with the examination of this case under the order of reference at my office, No. 21 West Third street, Cincinnati, at 10 o'clock a. m. of said day.

J. L. MINOR, *Examiner, &c.*

To Geo. H. Hilton, esq., and others, Cin., Jan. 30th, 1865.

Notice to defendants.

Defendants will please take notice of the above order of Examiner Miner, Jan. 30th, 1865.

G. M. LEE,
Sol'c. for Comp't.

Marshal's return.

Served a copy of the within notice on Geo. H. Hilton, personally, this 31st day of January, 1865.

A. C. SANDS,
U. S. Marshal, S. D. O.
By F. D. BARTLETT, *Deputy.*

Subpœna.

UNITED STATES OF AMERICA, *Southern District of Ohio, ss:*

You are hereby commanded to subpœna George H. Hilton, esqr., to appear before me, John L. Miner, one of the examiners of the circuit court of the United States within and for the 7th circuit and southern district of Ohio, at my office, No. 21 West Third street, Cincinnati, on the first day of February, A. D. 1865, at 10 o'clock a. m. of said day, to give testimony and the truth to say, in a cause pending in said circuit court, referred to me as examiner by order of said court, wherein L. Roberts & Co. are plaintiffs, and George
33 H. Hilton *et al.* are defendants. Hereof fail not.

Given under my hand seal this 30th day of January, A. D. 1865.

JOHN L. MINER,
Examiner, &c.

To A. C. Sands, esq., U. S. marshal for the southern district of Ohio.

Marshal's return.

Served a copy of the within subpœna on George H. Hilton, personally, this 31st day of January, 1865.

A. C. SANDS,
U. S. Marshal, S. D. O.
By F. D. BARTLETT, *Deputy.*

Subpœna.

UNITED STATES OF AMERICA, *Southern District of Ohio, ss:*

To Daniel Brunson and George W. Tucker:

You are hereby commanded to appear before me, John L. Miner, examiner of the circuit court of the United States in and for the southern district of Ohio, at my office, No. 21, West Third street, Cincinnati, at 10 o'clock a. m. of said day, to give testimony in an action pending in said circuit court of the United States in and for the southern district of Ohio, wherein L. Roberts & Co. are plaintiffs and George H. Hilton *et al.* are defendants, referred to me as examiner by order of said court. Hereof fail not under penalty of the law.

Given under my hand and seal, at Cincinnati, this 31st day of January, A. D. 1865.

[SEAL.] J. L. MINER,
Examiner, &c.

Marshal's return.

Served the within named Daniel Brunson and George W. Tucker, by copy at residence, this 31st day of January, 1865.

A. C. SANDS,
U. S. Marshal, S. D. O.
By F. D. BARTLETT, *Deputy.*

I, John L. Miner, an examiner of the circuit court of the United States for the southern district of Ohio, duly appointed and qualified, do hereby certify that in pursuance of the order of reference of said circuit court made in the above-entitled cause, a certified copy of which is hereto attached, marked Exhibit No. 1, on the 30th
34 day of January, 1865, I ordered and appointed Wednesday, the first day of February, 1865, to proceed with the examination under said order of reference, at my office, No. 21 West Third street, Cincinnati, at 10 o'clock a. m. of said day, and caused the parties, by their attorneys, to be duly notified thereof; a copy of which order and appointment, with proof of service, is hereto attached, marked Exhibit No. 2.

That in pursuance of said order and appointment, personally came before me, at my office, as aforesaid, at 10 o'clock a. m. of said 1st day of February, 1865, Geo. M. Lee, esq., solicitor for the said plaintiffs, Lewis Roberts & Co., and the said defendant George H. Hilton, esq., in propria persona, and the examination of witnesses then and there proceeded as follows:

UNITED STATES OF AMERICA, *Southern District of Ohio:*

Be it remembered, that on the 1st day of February, A. D. 1865, personally appeared at my office, No. 21 West Third street, in the city of Cincinnati, before me, John L. Miner, an examiner of the circuit court of the United States for the southern district of Ohio,

duly appointed and qualified, George W. Tucker and Daniel Brunson, to testify, and the truth to say, on the part and behalf of the plaintiffs, in the said suit of Lewis Roberts & Co. *vs.* George H. Hilton *et al.*, above entitled.

And the said witnesses being of lawful age, and having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the suit aforesaid, the said George W. Tucker did thereupon depose, testify, and say in answer to interrogations, as follows:

Deposition of George W. Tucker.

Ques. by plt'ffs' attorney:

What is your age, residence, and occupation?

Answer. I am fifty-seven years of age; reside in the city of
35 Cincinnati, 293 Richmond street; have resided in the city for thirty years; am, by occupation, a saddler.

Question No. 2. Are you the George W. Tucker, who, with Sarah Ann, your wife, on March 21st, 1859, deeded a lot on Court street to George H. Hilton and Honora, his wife?

Answer. Yes, sir; I am.

Question No. 3. How much was paid therefor?

Answer. The consideration was $65 per foot; there were 33 feet front by about 127½ in depth; total price, $2,145.

Question No. 4. Who paid you this purchase money?

Answer. Judge George H. Hilton.

GEO. W. TUCKER.

At the same time and place came also Daniel Brunson, a witness on behalf of the plaintiffs, who deposes as follows, in answer to questions by plaintiffs' attorney:

Question 1. State your age, residence, and occupation.

Ans. I will be 62 years old next April; I reside at 117 Hopkins street, Cincinnati; by occupation, a house painter.

Question No. 2. Are you the same Daniel Brunson that on October 1st, 1854, leased of Geo. M. Tucker a lot on Court street, 33 by 127½ feet in size, and afterwards assigned the lease, Nov'r 6, 1855, to George H. Hilton for $3,034 57?

Answer. I leased the above lot of George W. Tucker at the time specified in the question; I assigned the lease, 6th Nov., 1855, to Geo. H. Hilton for the benefit of his wife. He said he was acting as agent for his wife. Said it was money that his wife had or expected to get from sale of property on Main street, or in the country; I disremember which.

Ques. 3. How much money was paid down; and who paid it?

Ans. Geo. H. Hilton paid me $1,500; the first payment.

Ques. 4. How did he secure the rest of the purchase money?

Ans. By notes and mortgage on the property.

Ques. 5. Who paid these notes?

36 Ans. I got the money on them from Mr. Hilton; I got all

the money from him; but whether the notes were drawn up in his name or Mrs. Hilton's I do not remember.

Ques. 6. How did Mr. Hilton pay the money, in currency or by check on a bank?

Ans. The first payment he gave me a check for. Whether he paid money or gave checks for the two last payments, I cannot now remember.

Ques. 7. State if you ever made more than one assignment of a lease to Hilton or his wife; and whether he gave you more than one mortgage; and was this mortgage recorded.

Ans. I never made but the one assignment of a lease to Hilton; and but one mortgage was given, which I believe was recorded, but cannot say for certain.

Ques. 8. State whether you saw Mrs. Hilton before you assigned the lease; if not, who you made the bargain with.

Ans. No, sir; I did not see Mrs. Hilton; I made the bargain with George H. Hilton.

Ques. 9. When did you first understand from Hilton that you were to assign the lease to him in trust for his wife?

Ans. Not until it came in shape to be signed; I did not hear anything about Mrs. Hilton until the papers came to be signed.

DANIEL his ⋈ mark. BRUNSON.

Objections of def'dts to examination

George H. Hilton, one of the defendants, at the time and place of taking the foregoing depositions before me, objected and protested against the examination proceedings, because the plaintiffs' counsel has not filed interrogatories, and given ten days previous notice of the same; and for this reason declined to cross-examine the said witnesses; and for like cause declined and refused to submit himself as a witness to the examination of the solicitor of the plaintiffs, and also to produce his wife, Mrs. Honora Hilton, for like examination,
37 she being without the county of Hamilton, at Yellow Springs, in Greene county, Ohio. I further certify that, at the time and place of taking the foregoing depositions, George M. Lee, esq., counsel for said plaintiffs, produced before me the paper hereunto annexed, marked Exhibit No. 3, purporting to be the certified copy of a mortgage made by George H. Hilton to Daniel Brunson. And I further certify that on the first day of February, A. D. 1865, I was attended by George M. Lee, esq., of counsel for the said plaintiffs, Lewis Roberts & Co., by said defendant, George H. Hilton, and by the witnesses aforesaid, who were of sound mind and lawful age; and the witnesses having been by me carefully examined and cautioned and sworn to testify the whole truth, the depositions were reduced to writing by me in the presence of the witnesses, who subscribed the same in my presence, the said Daniel Brunson by his mark. And I do further certify that said paper hereunto annexed, marked Exhibit No. 3, is the identical paper which was produced before me

and offered in evidence by the counsel of said plaintiffs; that the same was marked as such exhibit by me, and was taken into and retained in my possession to be attached and sealed up with these depositions; that I have retained these depositions for the purpose of filing them in the court for which the same were taken. I further certify that I am not of counsel or attorney for either of the parties in the said depositions and caption named, or in any way interested in the event of said cause.

In testimony whereof I have subscribed my name and my seal, this 8th day of February, A. D. 1865.

[SEAL.] JOHN L. MINER,

Examiner Circuit Court of U. S. for South'n Dist. of Ohio.

[Stamp.]

Exhibit No. 3. *Received and recorded 6th Nov'r*, 1855, 11¼ *o'clock a. m.*

Know all men that George H. Hilton, trustee of his wife,
38 Honora Hilton, of the city of Cincinnati, Ohio, in consideration of one thousand dollars to her paid by Daniel Brunson, of the same place, the receipt whereof is hereby acknowledged, do hereby bargain, sell, and convey to the said Daniel Brunson, his heirs and assigns, forever, the following leasehold estate, subject to all the conditions and covenants contained in the case executed by George W. Tucker, of the one part, and said Daniel Brunson, of the other, dated the first day of October, A. D. 1854, and recorded in the records of Hamilton county, in the lease book No. 11, page 459; which property is described as follows, to wit: all those certain lots or parcels of land in the city of Cincinnati, county of Hamilton, and State of Ohio, being lot number eighty-six, and fifteen feet off the west side of lot number eighty-five, as known and designated on a plat of George W. Tucker's second subdivision of lots as recorded in the records of said county, in book of plats No. 1, page 186, beginning at a point in the south side of Catharine street, one hundred and twenty-three feet from the southeast corner of Freeman and Catharine streets, and three feet west of the northeast corner of said lot number 85; thence westerly thirty-three feet in front on the south side of said Catharine street to west line of said lot number 86; thence with said west line parallel with Freeman street in a southerly direction one hundred and twenty-seven and one-half (127½) feet, more or less, to a twelve feet alley; thence easterly along said alley thirty-three feet; thence northerly parallel with Freeman street
and east line of lot No. 85, 127½ feet, more or less, to begin-
39 ning; together with all the privileges and appurtenances to the same belonging; to have and to hold the same to the said Daniel Brunson, his heirs and assigns, forever; the grantor, his heirs and assigns, hereby covenanting with the grantee, his heirs and assigns, that the title so conveyed is unencumbered by any act of the said grantor, provided always that if the said George H. Hilton, trustee of the said Honora Hilton, shall cause to be paid unto the said Daniel Brunson, his heirs or assigns, his two certain promissory notes, of even date herewith, one for the sum of five hundred dollars,

payable in one year from date, with interest, the other for the sum of five hundred dollars, payable in two years from date, with interest, then these presents shall be void.

In witness whereof the said George H. Hilton, trustee of the said Honora Hilton, hereunto set his hand and seal, this sixth day of November, in the year eighteen hundred and fifty-five.

[SEAL.] GEO. H. HILTON,
Trustee of Honora Hilton.

Signed, sealed, and acknowledged in presence of—
R. JAMES ANDERSON, and
CHAS. C. HARRIS.

I have received of Geo. H. Hilton satisfaction in full of the within mortgage, as recorded in book No. 221, page 8, and the recorder is hereby authorized to cancel the same and enter the same of record in his office of records of Hamilton county, Ohio.

DANIEL BRUNSON.

Cincinnati, 13th March, 1858.

Entered 13th March, 1858.

J. W. CARLTON,
Recorder Ham. Co., O.

STATE OF OHIO, *Hamilton County, ss:*

Be it remembered, that on the sixth day of November, in the year of our Lord one thousand eight hundred and fifty-five, before me, the subscriber, a notary public in and for said county, personally came George H. Hilton, trustee of his wife, Honora Hilton, the
40 grantor in the above conveyance, and acknowledged the signing and sealing the same to be his voluntary act and deed for the uses and purposes therein mentioned.

In testimony whereof I have hereunto subscribed my name and affixed my notarial seal on the day and year last aforesaid.

[SEAL.] CHAS. C. HARRIS,
Notary Public.

Recorder's certificate.

THE STATE OF OHIO, *County of Hamilton, ss:*

I, John E. Rees, recorder of the county aforesaid, do hereby certify that the foregoing is a correct copy of a mortgage made by George H. Hilton, trustee, to Daniel Brunson, as recorded on the 6th day of November, A. D. 1855, in book No. 221, pages 8 and 9, of the Hamilton county records.

Witness my hand and official seal, this 1st day of February, A. D. 1865.

[SEAL.] JOHN E. REES,
Recorder Ham. Co., Ohio.

[Stamp.]

And afterwards, to wit, on the twenty-eighth day of June, in the year last aforesaid, came John L. Miner, the aforesaid examiner, and filed in the clerk's office of the court aforesaid the depositions of George H. Hilton and Honora Hilton herein, which are in the words and figures following, to wit:

Be it remembered, that on Wednesday, June 21st, 1865, personally came before me, as examiner of said court, under the order of reference made and entered in the above cause, on the 24th day of February, 1865, at the office of E. A. Ferguson, esq., in the city of Cincinnati, by agreement, George M. Lee, esq., solicitor for complainants, E. A. Ferguson, esq., sol. for defendants, and also the defendant, Geo. H. Hilton, esq., who presented himself for examination by complainants' solicitor, who, for the present, declines to examine him, but desiring to examine Mrs. Honora Hilton, who is not in attendance, it was in my presence agreed by counsel and the said Geo. H. Hilton that Mrs. Hilton should appear before me, at the same
41 place, for examination of complainants' solicitor, on Friday morning, June 23d, 1865, at 8 o'clock a. m., upon condition that $5 shall be taxed in the costs of this case to complainants as the railroad fare of Mrs. Hilton from Yellow Springs, where she is, to Cincinnati, and back again; whereupon the examination was, by consent, adjourned to that time.

TUESDAY MORNING, *June 23d*, 1865.

Met pursuant to the foregoing adjournment. Present, the examiner, Geo. M. Lee, esq., and E. A. Ferguson, counsel for the respective parties; also, George H. Hilton and Honora Hilton, the defendants, presenting themselves for examination of complainants' solicitor; and thereupon the said Honora Hilton, being by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the suit aforesaid, she did depose, testify, and say, in answer to questions asked by complainants' solicitor, as follows:

Deposition of Honora Hilton.

Question 1. Please turn your attention to the paper marked B, attached to your answer in this case, being an assignment of a lease by Daniel Brunson, dated Nov. 6th, 1855, and say to whom the $2,034 57 consideration of said assignment belonged.

Answer. The money belonged to me.

Question 2. Please state when and how you received and came to own the money. If it be patrimony, give a short statement how it was derived.

Answer. I inherited the money from my father. The amount was received at different times from Mr. Blossman, of New Orleans, who was my guardian, and who became very much embarrassed, and paid the money from time to time in sums of four or six hundred dollars, or thereabouts.

Question 3. Who gave the receipts to Mr. Blossman, your guardian, for this money since your marriage with Geo. H. Hilton?

Answer. The money was sent by drafts to this city (Cincinnati) by Mr. Blossman. The drafts were payable to my order, and I indorsed them. I think, after I indorsed them, my husband generally took them to bank and drew the money.

Question 4. How long before Nov. 6th, 1855, the date of Brunson's assignment, had Geo. H. Hilton drawn the money on these Blossman drafts?

Answer. That I cannot tell; cannot remember.

Question 5. Please state the date of your marriage with Geo. H. Hilton, and then at what period, relatively, to the Brunson assignment those drafts were received, to wit, whether they were received in the first year of your married life, or more nearly down to the date of Brunson's assignment.

I was married to Mr. Hilton in 1843. I received some money from Mr. Blossman shortly after I was married; then, owing to his embarrassments, some years elapsed before he paid any more. I think the money paid for the lease was received in the spring of 1855; and some money was received from Blossman after that period.

Question 6. Please state, as nearly as you can, how much of your patrimony from your guardian, Blossman, has, during your marriage, been thus remitted by Blossman, and collected by Mr. Hilton, your husband.

Answer. I suppose eight or ten thousand dollars.

Question 7. Were you present when the Brunson paper was executed? If so, please state how this money was paid over to Brunson, and how, if you know, the note and mortgage given to Brunson, and described in the assignment, were afterwards paid, to wit: I wish to know whether this Brunson note and money was paid by your husband's checks or cash.

Answer. I know that the first payment was paid down, but
13 I was not present; nor was I present when the mortgage and note were paid. I understand that these payments were made by Mr. Hilton, but with my money.

Question 8. Please look at the deed, marked C, attached your answer dated March 21st, 1859, signed by Geo. W. Tucker, and state how the money mentioned in said deed was paid, and by whom, if you know.

Answer. I did not see the money paid.

Question 9. Please state whether any of your patrimony was received from your guardian, Blossman, since the Tucker deed.

Answer. I think so; but cannot state how much.

Question 10. Were the greater or the lesser part of the Blossman remittances before Brunson's assignment?

Answer. I think the larger part (of the Blossman remittances) were received after the Brunson assignment, but cannot state positively.

Question 11. Was any considerable amount thus received after the Tucker deed?

Answer. I cannot remember that. And further says not.

HONORA HILTON.

At the same time and place presented himself for examination of complainants' solicitor, defendant Geo. H. Hilton, who being by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth in this cause, did depose, testify, and in answers to questions by complainants' solicitor, as follows:

Dep. of G. H. Hilton.

Question 1. Please state the date of your marriage with Mrs. Honora Hilton.

Answer. June, 1843.

Question 2. What patrimony had she then, and where?

Answer. She had derived from her father's estate between eight and nine thousand dollars, I think. At the time of our marriage it was in New Orleans, in the hands of her guardian.

Question 3. State if you have received this patrimony since
44 your marriage; and if so, how, and when.

Answer. We have, or rather my wife received it, and I attended to the business in conjunction with her. This money was received from Mr. Blossman, her guardian, from time to time, by remittances in drafts, payable to my wife's order, and indorsed by her and collected by me. Receipts for the same to the guardian were given by Mrs. Hilton. The next year after we were married, we went south to see my wife's friends and settle her estate. We found Mr. Blossman, her guardian, very much embarrassed, and he told me he considered himself insolvent; but still, at the time, he raised several hundred dollars; and said he would try and pay her from time to time; that he considered it a trust debt and sacred; and that we need have no fears as to the ultimate payment of it by him. After that he paid Mrs. Hilton a few hundred dollars each year for several years; then a long interregnum occurred, until he was elected to some lucrative office. About a year before the purchase of the property in controversy he commenced paying up; and he continuously paid, until he paid it all. In the spring or summer previous to the Brunson purchase, he paid. I think, some twenty-five hundred dollars; and with this, my wife and myself concluded to purchase her a residence, if possible, and make a first payment upon it. This money was considered as left by her with me for that purpose; and in the fall I made the purchase for her, she first having examined the house and being pleased with it. After the year 1855, Mr. Blossman paid from twelve to fifteen hundred dollars each year, until he paid all up.

45 Question 4. Were these Blossman drafts credited to your bank account from time to time as received?

Answer. I do not think I kept any bank account until I was elected probate judge, in 1858. After I began to keep a bank account I do not recollect whether the drafts referred to were passed to my account in bank or not.

Question 5. What then became of the immediate proceeds of these drafts?

Answer. The proceeds were kept on hand or used from time to time in various ways. I think the money had all been paid by Blossman before I commenced keeping a bank account.

Question 6. Was any of the identical money realized on these Blossman drafts ever paid over to Brunson or Tucker?

Answer. The first payment to Brunson was of the money derived from the draft remitted by Blossman. I got the money from my wife on that day and paid it over. In relation to the other payments made by Blossman I would state whether any of the money went to my bank account or not, which I cannot positively state. I know it was held by me for her in trust for the purpose of paying for the property which I had purchased and held as trustee for her; and she gave me the money for that purpose.

Question 7. State whether the house upon the premises described in the petition has been improved and enlarged since the purchases of Brunson or Tucker.

Answer. It has; at an expense from eight hundred to one thousand dollars.

Question 8. Who paid for these improvements?

Answer. I cannot say whether it was my wife's money or my own; but whether paid by her or by me, I was not in debt at the time.

Question 9. When were these improvements made, and who
46 paid for the labor and materials, and when were they paid for?

Answer. The improvements were made in 1859 or 1860; can't tell whether before or after the Tucker deed. I think I paid out the money for the labor and materials. The payments were made at the time the work was done.

Question 10. What is the present value of the premises in controversy described in the bill?

Answer. That is hard to say; I suppose, probably, twelve thousand dollars.

Cross-examined by defendant's solicitor:

Question 1. What part, if any, of the debt of the complainants' was incurred or owing by you to them prior to the Tucker deed?

Answer. Not one cent. I did not know the plaintiffs until several years after that time. The plaintiffs' debt was contracted in 1862.

Question 2. Was there any mortgage given to Tucker?

Answer. No; the money was paid down.

Question 3. What was your condition as to solvency or insolvency at the time of the Tucker deed?

Answer. I was perfectly solvent, and owed no one anything but what I was ready to pay on demand.

Question 4. How many debts, if any, (at date of Tucker deed,) had you then incurred or owed that remained unpaid?

Answer. I owed or incurred no debts at that time but some bills for family expenses, and they have all been paid.

Question 5. How has this property been used, as a family homestead? If yes, have you ever paid or accounted to Mrs. Hilton for its use and occupation?

Answer. It has been used since Nov., 1855, as our family residence till May, 1864, when Mrs. Hilton rented it. I have never paid or accounted to Mrs. Hilton for the use and occupation of the house.

Question 6. State what would be a fair yearly rent for the house while you used it.

Answer. I suppose from eight hundred to one thousand dol-
47 lars a year.

Question 7. Did you inform, or did Mrs. Hilton know, before or at the time of the execution and delivery of said Tucker deed of the form in which that deed was made out?

Answer. She did not; she never saw the deed until after this suit was brought.

Question 8. Did you inform her after the execution of the Tucker deed, and before or up to the time of bringing this suit, as to the form in which the deed was made out?

Answer. I did not; but merely told her it was made out in accordance with the assignment of the lease; that I held the property for her as her trustee, which I considered as correct, from the fact that the deed referred to the assignment, and was made in accordance therewith.

Re-examined by plaintiffs' counsel:

Question 1. If solvent in 1859, as you say, how has it happened that you are now unable to pay the judgment in controversy?

Answer. In the years 1861 and 1862 I got into certain flour speculations, which resulted in my insolvency, and this did grow out of my speculations in flour.

Cross-examined again:

Question 1. Prior to entering into these speculations, what was your profession or business?

Answer. I was an attorney at law, and had held the office of probate judge of this county.

Question 2. Was the assignment from Brunson or the deed from Tucker taken in the form in which they were taken, with a view to entering into trade or speculation, and becoming unable to pay your debts or insolvent?

Answer. Such thoughts never entered into my mind. But I considered it purchased for a home for my wife and her children. And further says not.

G. H. HILTON.

Examiner's certificate.

I certify that on the 23d day of June, 1865, I was attended
48 by Geo. M. Lee, esq., of counsel for the said complainants, Lewis Roberts & Co., by E. A. Ferguson, esq., counsel for the defendants, and by the witnesses aforesaid, the defendants, who were of sound mind and lawful age, and the said witnesses having been by me carefully examined, and cautioned, and sworn to testify the whole truth, the depositions were reduced to writing by me in the presence

of the witnesses, who subscribed the same in my presence; that I have retained the depositions for the making up my report, under said order of reference, to be returned and filed with the same in court. I further certify that I am not of counsel or attorney for either of the parties in the said depositions or caption named, or in any way interested in the event of said cause.

In testimony whereof I have hereunto subscribed my name and made my seal, this 23d day of June, 1865.

[SEAL.] JOHN L. MINER,
Examiner of U. S. Circuit Court
for South'n Dist. of Ohio.

49 THE UNITED STATES OF AMERICA,
Southern district of Ohio, ss:

I, John McLean, clerk of the circuit court of the United States within and for the district aforesaid, do hereby certify the foregoing transcript to be truly taken and copied from the records and files of said court, as the same are kept in this office.

In testimony whereof I have hereunto set my hand and affixed the seal of the court aforesaid, this 20th day of March, A. D. 1866, and in the 90th year of American independence.

Attest:

[SEAL.] JOHN McLEAN, *Clerk.*

50 THE UNITED STATES OF AMERICA:

Supreme Court of the United States to George H. Hilton and Honora Hilton, greeting:

Whereas L. Roberts & Co. obtained the allowance of an appeal from the circuit court of the United States for the 7th circuit and southern district of Ohio, directed to remove into the said Supreme Court, to be holden at the city of Washington on the first Monday in the month of December next, the record of a certain plaint, process, proceedings, and judgment in an action in chancery, wherein you, the said George H. Hilton and Honora Hilton, in that action lately recovered against the said Lewis Roberts and others, under the firm name of L. Roberts & Co., a decree for costs, as by the said record in the said circuit court remaining appears, in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said L. Roberts & Co. we are informed, and our said appeal is granted, issued, and allowed as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be. You are, therefore, hereby commanded and cited to be and appear before the judges of the said Supreme Court, at the city of Washington, at the next term of said court, to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness the honorable H. H. Leavitt, one of the judges of the said circuit court of the United States of America, this 10th day of December, in the year of our Lord one thousand eight hundred and

sixty-six, and of the independence of the United States of America the ninety-first.

H. H. LEAVITT,
One of the Judges of said Court.

United States of America, southern district of Ohio.

STATE OF OHIO, *Hamilton Co., ss :*

Personally appeared before the undersigned authority, George M, Lee, who, being duly sworn, deposes and says than on December 11th. 1866, he delivered personally a true copy of the within citation to E. A. Ferguson, esq., solicitor and counsel for George H. Hilton and Honora Hilton, defendants herein, at the city of Cincinnati, Ohio.

G. M. LEE.

Sworn to and subscribed before me, Dec. 11th, 1866.
[SEAL.] J. F. BALDWIN, *Notary Public.*

5-cent stamp.